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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/755,205	01/04/2001	Xiangzhong Yang	UCON-150	4832
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21874 7590 08/18/2004
EDWARDS & ANGELL, LLP
P.O. BOX 55874
BOSTON, MA 02205

EXAMINER

AFREMOVA, VERA

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

3/4

Advisory Action

Application No. 09/755,205	Applicant(s) YANG ET AL.	
Examiner Vera Afremova	Art Unit 1651	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires _____ months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1. A Notice of Appeal was filed on 30 July 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

- 3. Applicant's reply has overcome the following rejection(s): _____.
- 4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
- 6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 46-66.

Claim(s) withdrawn from consideration: none.

- 8. The drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.
- 9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
- 10. Other: _____

V. Afremova

**VERA AFREMOVA
PRIMARY EXAMINER**

Continuation of 5. does NOT place the application in condition for allowance because:

Applicants argue that the cited reference by Martino does not teach every elements of the claim that is the use equilibration and vitrification solutions. However, the claim language does not indicate any structural characteristics of these solutions and any material differences between these two solutions in the method for cryopreservation. The cited method results in a successful cryopreservation and, thus, the solution(s) whether they are named as culture medium or equilibration solution or vitrification solution were adapted and suitable to perform the same function of cryopreserving. Thus, the solution(s) that is used in the cited method for cryopreservation meets those elements or limitations that are claimed given broadest and reasonable interpretation of claim language. Moreover, the solution(s) of the cited reference by Martino et al. contain CPAs (cryoprotective additives) including presently claimed sugar and ethylene glycol.

With regard to the claim rejection under 35 USC 103 Applicants' arguments appear to be drawn to benefits or unexpected results of the Applicants' method (response page4, par. 2). However, it is well known that an unpredictable phenomenon is highly dependent upon specific proportions and/or amounts of particular ingredients used in the method(s). The finally rejected claims are not limited to the materials used in the method as argued. Moreover, it is not clear as presently argued that data are presented in the instant written disclosure to show any unexpected results.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references..

V.A.